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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

OVERNIGHT MAIL

JUN 22 1994

Charles W. Newton, III
Vice President for Environmental
and Regulatory Affairs
Olin Corporation
120 Long Ridge Road
Stamford, CT 06902

Re: Heleva Landfill Superfund Site

Dear Mr. Newton:

Enclosed please find a copy of the Administrative Order on Consent for Remedial Design ("AOC") which was signed on June 21, 1994 by the Regional Administrator of the United States Environmental Protection Agency, Region III ("EPA"). In accordance with Section 3.1 of the AOC, the AOC becomes effective on the third business day following the date on which it was sent to you by EPA by overnight mail, which will be Monday June 27, 1994.

In addition, please note that the Amended Administrative Order for Remedial Action ("Amended Order") issued by EPA on March 8, 1994, will also become effective on June 27, 1994, in accordance with Section XXI.B. of the Amended Order. Section XXII requires each Respondent to provide notice to EPA within five (5) days of the effective date of whether it intends to comply with the requirements of the Amended Order. Failure to comply with the Amended Order may subject Respondents to civil penalties of up to \$25,000 per day and punitive damages in an amount equal to three times the costs incurred by EPA as a result of Respondents' failure to take proper action.

If you have any questions, please contact me at (215) 597-0387.

Sincerely,

Elizabeth B. Lukens
Senior Assistant Regional Counsel

Enclosure

cc: Robert L. Collings, Esquire

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107-4431

OVERNIGHT MAIL

JUN 22 1994

Alan M. Schlesinger, Esquire
American Telephone & Telegraph Company
131 Morristown Road
Basking Ridge, NJ 07920-1650

Re: **Heleva Landfill Superfund Site**

Dear Mr. Schlesinger:

Enclosed please find a copy of the Administrative Order on Consent for Remedial Design ("AOC") which was signed on June 21, 1994 by the Regional Administrator of the United States Environmental Protection Agency, Region III ("EPA"). In accordance with Section 3.1 of the AOC, the AOC becomes effective on the third business day following the date on which it was sent to you by EPA by overnight mail, which will be Monday June 27, 1994.

In addition, please note that the Amended Administrative Order for Remedial Action ("Amended Order") issued by EPA on March 8, 1994, will also become effective on June 27, 1994, in accordance with Section XXI.B. of the Amended Order. Section XXII requires each Respondent to provide notice to EPA within five (5) days of the effective date of whether it intends to comply with the requirements of the Amended Order. Failure to comply with the Amended Order may subject Respondents to civil penalties of up to \$25,000 per day and punitive damages in an amount equal to three times the costs incurred by EPA as a result of Respondents' failure to take proper action.

If you have any questions, please contact me at (215) 597-0387.

Sincerely,

Elizabeth B. Lukens
Senior Assistant Regional Counsel

Enclosure

cc: Samuel I. Gutter, Esquire

AR000436

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

HELEVA LANDFILL SITE,
WHITEHALL TOWNSHIP, PENNSYLVANIA

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, and
OLIN CORPORATION,

Respondents

Proceeding Under Sections 106
and 122(a) of the Comprehensive
Environmental Response, Compens-
ation, and Liability Act of
1980, as amended, 42 U.S.C.
§§ 9606 and 9622(a).

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: III-94-19-DC
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ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL DESIGN

AR000437

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

HELEVA LANDFILL SITE,
WHITEHALL TOWNSHIP, PENNSYLVANIA

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, and
OLIN CORPORATION,

Respondents

Proceeding Under Sections 106
and 122(a) of the Comprehensive
Environmental Response, Compens-
ation, and Liability Act of
1980, as amended, 42 U.S.C.
§§ 9606 and 9622(a).

EPA Docket No.

III-94-19-DC

ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL DESIGN

The Parties to this Administrative Order on Consent ["Consent Order"], American Telephone and Telegraph Company, and Olin Corporation, ["Respondents"] and the United States Environmental Protection Agency ["EPA"], have agreed to the entry of this Consent Order, and the Respondents agree to undertake all actions required by this Consent Order pursuant to the terms and conditions of this Consent Order, including any attachments hereto.

I. GENERAL PROVISIONS

- 1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by sections 106 and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ["CERCLA"], 42 U.S.C. §§ 9606 and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580 [52 Fed. Reg. 2926 (January 29, 1987)]; and further delegated to the Regional Administrators of EPA by EPA Delegation Nos. 14-14-A and 14-14-C.
- 1.2 The Respondents consent to and will not contest EPA jurisdiction to issue and/or enforce this Consent Order.
- 1.3 On March 22, 1985, EPA issued a Record of Decision ["ROD"] selecting remedial action for implementation at the Heleva Landfill Site in North Whitehall Township,

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Lehigh County, Pennsylvania ["Site"]. On September 30, 1991, EPA issued an Amended Record of Decision ["Amended ROD"] for the Heleva Landfill Site. All findings, conclusions and determinations supporting the legal requirements for issuance of this Consent Order under section 106 of CERCLA, 42 U.S.C. § 9606, are set forth in the ROD and the Amended ROD. Issuance of this Consent Order is practicable and in the public interest within the meaning of section 122(a) of CERCLA, 42 U.S.C. § 9622(a).

- 1.4 The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.
- 1.5 All activities undertaken by Respondents pursuant to this Consent Order shall be performed in accordance with the requirements of all applicable Federal and State laws and regulations. Respondents must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the Amended ROD. EPA has determined that activities conducted pursuant to this Consent Order and approved by EPA shall be considered to be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ["NCP"], 40 C.F.R. Part 300.
- 1.6 Respondents are jointly and severally responsible for carrying out all actions required by this Consent Order. In the event of the failure of one or more of the Respondents to implement the requirements of this Consent Order, the remaining Respondent(s) shall complete all such requirements.
- 1.7 EPA agrees to enter into this Consent Order because Respondents hereby agree to reimburse EPA in the amount of \$690,676 for past costs associated with the development of the Remedial Design, appended as Exhibit 3 to the Administrative Order for Remedial Action, issued June 30, 1993 ("original UAO"). Neither payment of this amount nor any provision of this Order satisfies or waives EPA's claims against Respondents to recover all past costs including the unreimbursed costs associated with the development of the remedial design. The United States reserves the right to seek recovery of all such past costs in United States v. Stephen D. Heleva, et al., C.A. No. 93-1339. EPA reserves the right to withdraw from this Consent Order if Respondents do not timely enter into an appropriate agreement for reimbursement of EPA's past costs. Respondents maintain that the past costs to be paid by Respondents, as set forth in this Paragraph, are in excess of the appropriate share that

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would be allocated to Respondents in an allocation of costs among potentially responsible parties (PRPs). Respondents' agreement to pay past costs as set forth in this Paragraph in no manner reflects any opinion by EPA as to the appropriate allocation of costs among PRPs.

II. STATEMENT OF PURPOSE

- 2.1 In entering into this Consent Order, the mutual objective of EPA and the Respondents is to expedite commencement and performance of the Remedial Design to implement the remedy as set forth in the Amended ROD at pages 12 through 15 in accordance with the requirements of this Consent Order.
- 2.2 In an effort to simplify this Consent Order, the Parties have agreed that certain obligations of this Consent Order shall be expressed by reference to provisions of the Amended Administrative Order for Remedial Action, EPA Docket No. III-93-42-DC, issued March 8, 1994, appended hereto as Attachment A ["Amended UAO"]. Each referenced provision of the Amended UAO, including each provision of the Amended UAO referenced therein, shall be incorporated herein by reference and shall be effective as if set forth in this Consent Order in its entirety. For those provisions, and solely for purposes of this Consent Order, the following definitions apply except as otherwise provided in this Consent Order:
- (a) The term "Order" when used in the Amended UAO shall mean this Consent Order;
 - (b) The term "Work" when used in this Consent Order shall mean the activities the Respondents are required to perform under this Consent Order including the Remedial Design, as described in Section VI below, and any other activities required to be undertaken pursuant to this Order.
- 2.3 Except as provided herein, all terms shall be defined in the manner set forth in Section VI (Definitions) of the Amended UAO.

III. EFFECTIVE DATE AND TERMINATION OF WORK

- 3.1 The effective date of this Consent Order shall be the third business day following the date on which EPA forwards a fully executed true and correct copy of this Consent Order to Respondents via overnight delivery.

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- 3.2 Respondents' obligation to conduct Work under this Consent Order shall terminate at the time EPA approves or finally disapproves the Remedial Design submitted by Respondents pursuant to Section VI of this Consent Order.
- 3.3 In the event that Respondents fail to provide written notice to EPA's Remedial Project Manager of their intent to comply fully with the terms of the Amended UAO pursuant to Section XXII of the Amended UAO, the requirement to perform Work under this Consent Order shall terminate and the requirement to implement the Remedial Design attached to the original UAO, shall be effective, as set forth in and pursuant to the terms of the Amended UAO. In the event that any penalties have accrued under this Consent Order, such penalties shall be paid to EPA in accordance with Section XVI of this Consent Order.

IV. PARTIES BOUND

- 4.1 This Consent Order shall apply to and be binding upon EPA and upon Respondents and their successors and assigns. No change in ownership or corporate status of any Respondent shall in any way alter Respondents' responsibilities under this Consent Order.
- 4.2 Section II of the Amended UAO (Parties Bound) is incorporated herein by reference with respect to Respondents American Telephone and Telegraph Company (AT&T) and Olin Corporation (Olin). This provision is not intended in any way to restrict or nullify the requirement that Arthur J. Heleva and Mary Ann Klugh, as Trustees of the Steven D. and Lois M. Heleva Trust, Steven D. Heleva, Lois M. Heleva, and Heleva Land Fill, Inc., Respondents to the Amended UAO, provide Site Access as specified in Section XIII of the Amended UAO, and incorporated herein by Section VIII of this Consent Order.

V. NOTICE TO THE COMMONWEALTH

- 5.1 Notice of issuance of this Consent Order has been given to the Commonwealth of Pennsylvania, pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606(a).

VI. WORK TO BE PERFORMED

- 6.1 Selection of Contractors

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(a) All aspects of the Work to be performed by Respondents pursuant to Sections VI (Work to be Performed), VII (Quality Assurance) and XII (Emergency Response) of this Consent Order shall be under the direction and supervision of the same Supervising Contractor who was selected by Respondents by letter dated August 5, 1993, pursuant to the Administrative Order for Operation and Maintenance, EPA Docket No. III-93-34-DC, issued by EPA on June 30, 1993. EPA may at any time disapprove the use of this Supervising Contractor, if at any time EPA determines the Supervising Contractor to be unqualified or otherwise unable to perform the Work. In such event, the Respondents shall propose a replacement in accordance with the requirements of this Section. If at any time after acceptance by EPA of the Supervising Contractor, Respondents propose to change a Supervising Contractor, Respondents shall give such notice to EPA and shall obtain acceptance of their selection from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Order.

(b) EPA will notify Respondents in writing of its acceptance or disapproval of Respondents' selection of a new proposed Supervising Contractor. If EPA disapproves of the selection of any new contractor as Supervising Contractor, Respondents shall submit to EPA the names of at least three contractors, including the qualifications of each contractor, that would be acceptable to them within thirty days of receipt of EPA's disapproval of the selection of the contractor previously selected. EPA will provide written notice of the names of the contractor(s) that it accepts. Respondents may select any accepted contractor from that list and shall notify EPA of the name of the contractor selected within twenty-one days of EPA's designation of accepted contractors.

(c) After the Remedial Design Work Plan is approved and prior to commencement of any Work thereunder, the Respondents shall submit to EPA for acceptance the names and qualifications of any additional contractors and subcontractors, including the name(s) and qualifications of the individual(s) or entities responsible for completion of the Remedial Design submittal (the "Remedial Design Professional"). Respondents shall notify EPA of the date the contract is entered into with the Remedial Design Professional. The Remedial Design Professional shall ensure that any work to be performed at the Site during construction is performed under the direction of a Professional Engineer to ensure that the Work will be performed in accordance with the approved Remedial Design submittal(s). EPA retains the right to

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disapprove the selection of any additional contractors and subcontractors selected to perform the Work. Within fourteen days of receipt by EPA of the names of the additional contractors or subcontractors, EPA will notify Respondents of its acceptance or disapproval of the selection of the additional contractors or subcontractors. If EPA disapproves the selection of any additional contractor or subcontractor, Respondents may submit further information to EPA giving reasons why the selection of the additional contractor or subcontractor should be accepted. Within fourteen days of the receipt of the notice of disapproval, Respondents shall notify EPA of the name and qualifications of a replacement additional contractor or subcontractor. If at any time during the pendency of this Consent Order a decision is made by Respondents to retain a substitute additional contractor or subcontractor, selection of the substitute shall be governed by the provisions of this Paragraph. If EPA fails to provide notice of its acceptance or disapproval of the selection of any additional contractor or subcontractor as provided in this Paragraph and this failure prevents the Respondents from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Order, Respondents may seek relief under the provisions of Section XIV (Force Majeure) of this Consent Order.

6.2

Remedial Design

(a) Under the circumstances of this case, based on the fact that Respondents have commenced preparation of a Remedial Design, within ten days after the effective date of this Consent Order, the Respondents shall submit to EPA for approval a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan") and shall submit the Quality Assurance Project Plan (QAPP, as described in Section XV of the Amended UAO), prepared in accordance with Section XV of the Amended UAO. The Remedial Design Work Plan shall provide for the design of the remedy as set forth in the Amended Record of Decision at pages 12 through 15 and, upon its approval by EPA, shall be enforceable under this Consent Order. This design shall also provide for the connection of the surface water pump station, which will be installed by the Army Corps of Engineers to protect the integrity of the cap, to the discharge of the ground water treatment facility. Within fourteen days of the issuance of this Consent Order, the Respondents shall submit to EPA a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

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(b) The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all necessary remedial design and pre-design tasks, including, but not limited to: (1) a Sampling and Analysis Plan (SAP), prepared in accordance with Section XV of the Amended UAO, (2) a Remedial Design Permitting Requirements Plan, (3) a Remedial Design Contingency Plan, (4) work plans and schedules for the design and implementation of treatability studies, and (5) plans and schedules for the preparation and submission of preliminary, pre-final and final design submittals. The treatability study work plans shall include Treatability Study Construction Quality Assurance Project Plans applicable to necessary construction. In addition, the Remedial Design Work Plan shall include an expeditious schedule for completion of all components of the Remedial Design.

(c) Upon approval by EPA of the Remedial Design Work Plan, the Respondents shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Respondents shall submit all plans, submittals, and other deliverables required in accordance with the approved schedule therein for review and approval pursuant to Section X (Submissions Requiring Agency Approval). Unless otherwise approved by EPA, the Respondents shall not commence activities at the Site prior to approval of the Remedial Design Work Plan.

(d) The preliminary design submittal required under Paragraph 6.2(b), above, shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

(e) The pre-final and final design submittals required under Paragraph 6.2(b), above, shall each include, at a minimum, the following plans, as well as expeditious schedules and specific methodologies for implementation of these plans: (1) final designs and specifications for the Remedial Action; (2) Operation and Maintenance Plan; (3) a Remedial Action Construction Plan; (4) a Remedial Action Construction Quality Assurance Plan (CQAP); (5) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); (6) a Groundwater Monitoring Plan that will include provisions for sampling of residential and early warning wells (monitoring wells located upgradient from residential wells designed to

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detect the spread of contamination before such residential wells are impacted); (7) complete specifications for preparation of a Health and Safety Plan for field activities required by the pre-final/final design; (8) complete specifications for preparation of procedures and plans for the decontamination of equipment and disposal of contaminated materials (the "Decontamination Plan"); (9) a Remedial Action Permitting Requirements Plan and (10) a Remedial Action Contingency Plan. Respondents shall ensure that specifications required under item 7, above, as accepted by EPA and under item 8, above, as approved by EPA, are met by Respondents' contractor(s) in preparing the Health and Safety Plan and the Decontamination Plan. The Decontamination Plan shall be submitted by Respondents for approval, and the Health and Safety Plan for field activities for acceptance, in accordance with the schedule set forth in the final design submittal, and upon approval of the Decontamination Plan and acceptance of such Health and Safety Plan, such plans shall be incorporated in, and enforceable as part of, the Remedial Action Work Plan. The CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify an Independent Quality Assurance Team (IQAT) to conduct a quality assurance program during the construction phase of the project. The IQAT shall be responsible for examining and testing various materials, procedures and equipment during implementation of the construction activities. The IQAT shall perform on-Site inspections of the Work to assess compliance with project standards, verify that the construction quality assurance plan is implemented, and report to the Respondents and EPA the results of all inspections.

(f) Upon approval by EPA or approval with required modifications, as provided in Paragraphs C and E of Section VIII of the Amended UAO, as referenced in Section X of this Consent Order, of all components of the final design submittal, under the Amended UAO Respondents are required to submit, within 60 days, a Remedial Action Work Plan.

- 6.3 The Work performed by the Respondents pursuant to this Consent Order shall, at a minimum, achieve the Performance Standards as set forth in the Amended Record of Decision and in Appendix B of this Consent Order.
- 6.4 Respondents acknowledge and agree that nothing in this Consent Order, the Description of Selected Remedy in the Amended ROD at pages 12 through 15, the Performance Standards, or the Remedial Design Work Plan constitutes

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a warranty or representation of any kind by EPA that compliance with the work requirements in the Remedial Design Work Plan will achieve the Performance Standards as set forth in Appendix B. Such compliance shall not foreclose EPA from seeking compliance with all terms and conditions of the Amended UAO, including, but not limited to, the applicable Performance Standards.

- 6.5 Respondents shall, prior to any off-Site shipment of Hazardous Substances from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager of such shipment of Hazardous Substances. However, this requirement to notify EPA shall not apply to any off-Site shipment when the total volume of all shipments will not exceed 10 cubic yards.

(a) Respondents shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Hazardous Substances are to be shipped; (2) the type and quantity of the Hazardous Substances to be shipped; (3) the expected schedule for the shipment of the Hazardous Substances; and (4) the method of transportation. The Respondents shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Hazardous Substances to another facility within the same state, or to a facility in another state.

(b) The identity of the receiving facility and state will be determined by the Respondents following the award of the contract for Remedial Action construction. Respondents shall provide the written notification required by this Subsection 6.5, including the information required by Paragraph 6.5(a) as soon as practicable after the award of the contract, but in no case less than 14 days before the Hazardous Substances are actually shipped.

- 6.6 In the event EPA determines that Respondents have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Respondents may dispute EPA's determination that the Respondents failed to implement a provision of the Work in an adequate or timely manner only by invoking the procedures set forth in Section XV below (Dispute Resolution).

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VII. QUALITY ASSURANCE

- 7.1 Section XV (Quality Assurance) of the Amended UAO is incorporated herein by reference.

VIII. ACCESS

- 8.1 Section XIII (Site Access) of the Amended UAO is incorporated herein by reference.

IX. REPORTING REQUIREMENTS

- 9.1 Section VII.E.6 (Progress Reports) of the Amended UAO is incorporated herein by reference.

X. SUBMISSIONS REQUIRING AGENCY APPROVAL

- 10.1 Section VIII (Plans and Reports Requiring EPA Approval) of the Amended UAO is incorporated herein by reference.

XI. PROJECT COORDINATOR

- 11.1 Section IX (Designated Project Coordinators) of the Amended UAO is incorporated herein by reference.

XII. EMERGENCY RESPONSE

- 12.1 Section XII (Endangerment and Emergency Response) of the Amended UAO is incorporated herein by reference.

XIII. INDEMNIFICATION

- 13.1 Section XXV (The United States Not Liable) of the Amended UAO is incorporated herein by reference.

- 13.2 Respondents agree to indemnify and hold harmless the EPA, its agents, officers, employees and representatives from any and all causes of action caused by any acts or omissions of Respondent or its contractors in carrying out Work. Respondents do not agree to indemnify and hold harmless the EPA, its agents, officers, employees and representatives from any and all causes of action caused solely by any acts or omissions of EPA, its agents, officers, employees or representatives.

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XIV. FORCE MAJEURE

- 14.1 "Force majeure," for purposes of this Consent Order, is defined as any event arising from causes beyond the reasonable control of each and every Respondent or of any entity controlled by such Respondents, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Order despite Respondents' best efforts to fulfill the obligation. The requirement that the Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work, failure to attain the Performance Standards, or increased costs.
- 14.2 If any event occurs or has occurred that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Respondents shall notify by telephone the EPA Remedial Project Manager or, in his absence, the Section Chief, Central Pennsylvania Section, Superfund Remedial Branch, or, in the event both of EPA's designated representatives are unavailable, the EPA Region III Emergency Hotline at (215) 597-9898, within forty-eight hours of when Respondents or any one of them first knew or should have known that the event might cause a delay. Within five days thereafter, Respondents shall provide in writing to EPA an explanation and description of the reasons for the delay; the obligations and deadlines Respondents claim are affected by the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Respondents' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Respondents, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Respondents shall include, with any notice, documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure for that event. Respondents shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

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- 14.3 If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Order that are affected by the force majeure event will be extended by EPA, for such time as is necessary to complete those obligations and EPA will notify the Respondents of the length of the extension, if any, affected by the force majeure event for performance of the obligations. An extension of the time for performance of the obligation(s) affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Respondents in writing of its decision.
- 14.4 If the Respondents elect to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), they shall do so no later than fifteen days after receipt of EPA's notice. In any such proceeding, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of Paragraphs 14.1 and 14.2, above. If Respondents carry this burden, the delay at issue shall be deemed not to be a violation by Respondents of the affected obligation of this Consent Order identified to EPA.

XV. DISPUTE RESOLUTION

- 15.1 Unless otherwise expressly provided for in this Consent Order, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Order. However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of the Respondents that have not been disputed in accordance with this Section.
- 15.2 Any dispute which arises under or with respect to this Consent Order shall in the first instance be the subject of informal negotiations between EPA and the Respondents. The period for informal negotiations shall not exceed twenty days from the time the dispute arises, unless it is modified by written agreement of EPA and the Respondents. The dispute shall be considered to have

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arisen when one party sends the other parties a written Notice of Dispute.

- 15.3 (a) In the event that EPA and the Respondents cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten days after the conclusion of the informal negotiation period, Respondents invoke the formal dispute resolution procedures of this Section by serving on EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Respondents. The Statement of Position shall specify the Respondents' position as to whether formal dispute resolution should proceed under Paragraph 15.4 or 15.5.

(b) Within fourteen days after receipt of Respondents' Statement of Position, EPA will serve on Respondents its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 15.4 or 15.5.

(c) If there is disagreement between EPA and the Respondents as to whether dispute resolution should proceed under Paragraph 15.4 or 15.5, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable.

- 15.4 Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Order; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Order. Nothing in this Consent Order shall be construed to allow any dispute by Respondents regarding the validity of the Amended ROD's provisions.

(a) An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted

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pursuant to this Paragraph and Paragraph 15.3, above. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

(b) The Associate Director for Superfund of the Hazardous Waste Management Division of EPA Region III will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 15.4(a) of this Section.

(c) In proceedings on any dispute governed by this Paragraph, Respondents shall have the burden of demonstrating that the decision of EPA is arbitrary and capricious or otherwise not in accordance with law.

15.5 Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

(a) Following receipt of Respondents' Statement of Position submitted pursuant to Paragraph 15.3 of this Section, the Associate Director for Superfund of the Hazardous Waste Management Division of EPA Region III will issue a final decision resolving the dispute. EPA's decision shall be binding on Respondents. Respondents shall bear the burden of coming forward with evidence and the burden of persuasion.

15.6 The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone, or affect in any way any obligation of the Respondents under this Consent Order, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Order. In the event that the Respondents do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties).

XVI. STIPULATED PENALTIES

16.1 Respondents shall be liable for stipulated penalties in the amounts set forth in Paragraphs 16.2 and 16.3 of this Section to EPA for failure to comply with the requirements of this Consent Order specified below, unless excused under Section XIV (Force Majeure).

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"Compliance" by Respondents shall include completion of the activities under this Consent Order or any work plan or other plan approved under this Consent Order identified below in accordance with all applicable requirements of law, this Consent Order, and any plans or other documents approved by EPA pursuant to this Consent Order and within the specified time schedules established by and approved under this Consent Order.

- 16.2 The following stipulated penalties shall be payable per violation per day to EPA for any noncompliance identified in Paragraph 16.2(b), below, of this Section:

(a) <u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$2,000	1st through 14th day
\$5,000	15th through 30th day
\$7,500	31st day and beyond

(b) Failure to comply with requirements of Section VI (Work to be Performed), Section VII (Quality Assurance), Section X (Submissions Requiring Agency Approval), and Section XII (Emergency Response).

- 16.3 The following stipulated penalties shall be payable per violation per day to EPA for any noncompliance identified in Paragraph 16.3(b), below, of this Section:

(a) <u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

(b) Failure to comply with the requirements of Section I (General Provisions), and Section IX (Reporting Requirements).

- 16.4 All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Separate penalties shall accrue for each separate violation of this Consent Order.

- 16.5 Following EPA's determination that Respondents have failed to comply with a requirement of this Consent Order, EPA will give Respondents written notification of same and describe the noncompliance. However, penalties shall accrue as provided in the preceding Paragraph

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whether or not EPA has notified the Respondents of a violation. EPA may send the Respondents a written demand for the payment of the penalties.

- 16.6 All penalties owed to EPA under this Section shall be due and payable within thirty days of the Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the Dispute Resolution procedures under Section XV (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to United States Environmental Protection Agency, Region III Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the EPA Project Coordinator and to the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.
- 16.7 Stipulated penalties shall continue to accrue during any dispute resolution period. In the event Respondents do not prevail upon resolution of a dispute, Respondents shall pay all stipulated penalties owed within thirty (30) days of receipt of EPA's decision regarding the dispute. These penalties shall include all penalties which accrued prior to and during the period of dispute. Stipulated penalties shall not be owed or collectible for the matter, or that portion of the matter, in dispute to the extent Respondents prevail.
- 16.8 Neither the invocation of dispute resolution procedures under Section XV (Dispute Resolution) nor the payment of penalties shall alter in any way Respondents' obligation to complete the performance of the Work required under this Consent Order.
- 16.9 If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties and interest and also a penalty charge of six percent on any portion of the debt which remains delinquent more than ninety days after payment is due. However, should assessment of such a penalty be required, it will be assessed from the first day payment is due. Respondents shall pay interest on the unpaid balance, which shall begin to accrue at the end of the thirty-day period following Respondents' receipt from EPA of a demand for payment at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Penalty charge payments shall be paid by certified check made payable to the "Treasurer, United States of America," and shall be

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mailed to U.S. EPA Region III, P.O. Box 360515, Pittsburgh, PA 15251-6515. Copies of check(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to the EPA Project Coordinator and to the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

- 16.10 Nothing in this Consent Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).
- 16.11 No payments made under this Section shall be tax deductible for Federal tax purposes.
- 16.12 Notwithstanding any other provision of this Section, EPA may, in its sole discretion, forgive any stipulated penalties that accrue under this Section.

XVII. COVENANTS BY RESPONDENTS

- 17.1 Respondents hereby covenant not to sue and agree not to assert any claims or causes of action against EPA with respect to this Consent Order, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law, for Work performed pursuant to this Consent Order. These covenants shall not apply to, and Respondents reserve all rights with respect to claims or causes of action against EPA with respect to the original UAO or Amended UAO. Moreover, Respondents reserve, and this Consent Order is without prejudice to, actions against EPA based on negligent action taken directly by EPA (not including oversight or approval of Respondents plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

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XVIII. ACCESS TO INFORMATION

- 18.1 Section XIV (Sampling and Data/Document Availability) of the Amended UAO is incorporated herein by reference.

XIX. RETENTION OF RECORDS

- 19.1 Section XVI (Record Preservation) of the Amended UAO is incorporated herein by reference.

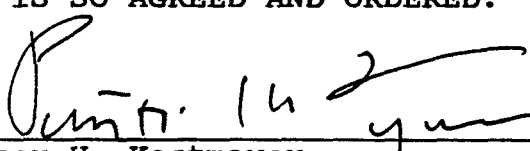
XX. COMMUNITY RELATIONS

- 20.1 Section XIX (Community Relations) of the Amended UAO is incorporated herein by reference).

XXI. MODIFICATION

- 21.1 Except as provided in Paragraph 1.7 above, no modifications shall be made to the provisions of this Consent Order without written notification to, and approval of, the Parties.
- 21.2 Modifications to the Remedial Design Work Plan may be made by mutual agreement of the EPA Remedial Project Manager and Respondents' Project Coordinator. Any such modifications must be in writing and signed first by the Project Coordinator and then by the EPA Remedial Project Manager. The effective date of the modification shall be the date on which the modification is signed by the EPA Remedial Project Manager.

IT IS SO AGREED AND ORDERED.



Peter H. Kostmayer
Regional Administrator
EPA Region III

6-21-94

Date

FOR THE RESPONDENTS:

Each of the undersigned hereby certifies that he is authorized to execute this Consent Order on behalf of the Respondent for which he has signed and to bind said Respondent to the terms and conditions of this Consent Order.

AR000455

Heleva Landfill Site
EPA Docket No. III-94-19-DC

FOR RESPONDENT AMERICAN TELEPHONE AND TELEGRAPH COMPANY

John C. Borum

5/17/94

John C. Borum

Date

Environment and Safety Engineering Vice President
American Telephone and Telegraph Company

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Heleva Landfill Site
EPA Docket No. III-94-19-DC

FOR RESPONDENT OLIN CORPORATION

Charles W. Newton, III
Charles W. Newton, III
Vice President for Environmental
and Regulatory Affairs
Olin Corporation

6/1/94
Date

AR000457

RLC

APPENDIX A

AR000457a

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF

HELEVA LANDFILL SITE,
WHITEHALL TOWNSHIP, PENNSYLVANIA

ARTHUR J. HELEVA AND MARY
ANN KLUGH AS TRUSTEES OF
THE STEPHEN D. AND LOIS M.
HELEVA TRUST, STEPHEN D. HELEVA,
LOIS M. HELEVA, HELEVA LAND FILL,
INC., AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, and
OLIN CORPORATION

Respondents

Proceeding Under Section 106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended,
42 U.S.C. § 9606(a)

I hereby certify that the
within is a true and correct copy
of the original Order
filed in this matter.

Elizabeth B. Hickman
Attorney for EPA

Docket No. III-93-42-DC

AMENDED ADMINISTRATIVE ORDER

FOR REMEDIAL ACTION

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF

HELEVA LANDFILL SITE,
WHITEHALL TOWNSHIP, PENNSYLVANIA

ARTHUR J. HELEVA AND MARY
ANN KLUGH AS TRUSTEES OF
THE STEPHEN D. AND LOIS M.
HELEVA TRUST, STEPHEN D. HELEVA,
LOIS M. HELEVA, HELEVA LAND FILL,
INC., AMERICAN TELEPHONE AND
TELEGRAPH COMPANY, and
OLIN CORPORATION

Respondents

Docket No. III-93-42-DC

Proceeding Under Section 106(a)
of the Comprehensive Environmental
Response, Compensation, and
Liability Act of 1980, as amended,
42 U.S.C. § 9606(a)

AMENDED ADMINISTRATIVE ORDER

FOR REMEDIAL ACTION

Having determined the necessity for implementation of remedial activities at a portion of the Heleva Landfill Superfund Site (as defined below) in North Whitehall Township, Lehigh County, Pennsylvania, the United States Environmental Protection Agency ("EPA") hereby Orders as follows:

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I. JURISDICTION

A. This Administrative Order ["the Order"] is issued to Respondents by EPA under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended, ["CERCLA"]. This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2923, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-B.

B. Prior notice of issuance of this Order has been given to the Commonwealth of Pennsylvania pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

C. This Amended Order will become effective if and only if an Administrative Order on Consent for Remedial Design (AOC) in this matter is signed by EPA and the appropriate Respondents. This Amended Order will become effective on the third business day following the date on which EPA forwards a fully executed true and correct copy of the AOC to Respondents via overnight delivery, and will from that date forward supersede the original Administrative Order for Remedial Action issued in this matter on June 30, 1993. The effective date of this Order, as used herein, shall mean the effective date of this Amended Order. The Respondents are required to comply with all the terms and requirements herein to the extent that they have not already complied with the same requirement as set forth in the original

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Order. This Amended Order does not affect any violations of the June 30, 1993 Order that may have occurred prior to the effective date of this Order, nor EPA's ability to take action for violations of that Order. All references in this Amended Order to the operative effect of the AOC and any attachments thereto are made contingent on the signing of the AOC by EPA and the appropriate Respondents. In the event that the AOC is not signed by EPA and the appropriate Respondents, this Amended Order will not become effective, and the original Administrative Order for Remedial Action issued in this matter on June 30, 1993 will remain in full force and effect.

II. PARTIES BOUND

A. This Order is issued to Arthur J. Heleva and Mary Ann Klugh as Trustees of the Stephen D. and Lois M. Heleva Trust (the "Trust"), Stephen D. Heleva, Lois M. Heleva, Heleva Land Fill, Inc. ("Heleva Land Fill"), American Telephone and Telegraph Company ("AT&T") and Olin Corporation ("Olin"), ("Respondents").

B. This Order shall apply to and be binding upon the Respondents and their agents, successors and assigns.

C. Respondents are jointly and severally responsible for implementing all of the requirements of this Order. The failure by one or more of the Respondents to comply with all or any part of this Order shall not in any way excuse or justify noncompliance by any other Respondent.

D. Neither a change in ownership of any property covered by this Order, nor a change in the ownership or corporate or

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partnership status of any Respondent, shall in any way alter, diminish, or otherwise affect Respondents' obligations and responsibilities under this Order.

E. Within 15 days after the effective date of this Order, each Respondent who owns real property comprising all or part of the Site shall record a notice of the existence of this Order on the deed(s) for said property for the purpose of giving notice to prospective purchasers of the existence of this Order. Each such Respondent shall, within 15 days after the effective date of this Order, send notice of such recording to the EPA Remedial Project Manager.

F. In the event of any change in ownership or control of any of the property covered by this Order that is owned or controlled by any Respondent, that Respondent shall notify EPA, in writing, at least thirty (30) days in advance of the effective date of such change, of the name, address, and telephone number of the transferee-in-interest of such property. In addition, that Respondent shall provide EPA with copies of all agreement(s), including but not limited to indemnification agreements, executed in connection with the transfer or change within five (5) days of the effective date of such agreement(s), and shall provide a copy of this Order to all transferees-in-interest prior to execution of any agreement for transfer. In no event shall the conveyance of an interest in the property that includes, or is a portion of, the Site release or otherwise affect the liability of Respondents to comply with this Order.

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G. In the event of any change in majority ownership or control of any Respondent, that Respondent shall notify EPA, in writing, no later than thirty (30) days after such change, of the nature and effective date of such change. Such Respondent shall provide a copy of this Order to the prospective owner(s) or successor(s) of the Respondent before any change of ownership or control becomes irrevocable.

H. Respondents shall provide a copy of this Order to all contractors, subcontractors, laboratories, consultants, and other persons retained to conduct or monitor any portion of the Work performed pursuant to this Order prior to execution of any agreements or contracts with such persons. Respondents shall condition all contracts and agreements with such persons on compliance with the terms of this Order. Notwithstanding the terms of such contracts or agreements, Respondents remain responsible for complying with the terms of this Order and for ensuring that their contractors, subcontractors, laboratories, consultants, and other persons retained to conduct or monitor any portion of the Work required by this Order comply with the terms of this Order.

I. In the event that any of the Respondents file for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Respondent shall notify EPA within three (3) days of such filing.

III. FINDINGS OF FACT

The following facts are a synopsis of information contained

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in the Administrative Record supporting issuance of this Order. That Administrative Record is incorporated by reference as if fully set forth herein:

A. Heleva Landfill Site Location, History, and Uses

1. The Heleva Landfill Site consists of an approximately 93 acre tract of land encompassing an approximately 25 acre landfill as well as adjacent properties under which contaminated groundwater has migrated in North Whitehall Township, Lehigh County, Pennsylvania. The Site is located between Ironton and Ormrod and is bounded generally by Legislative Route 39049 on the south and east, Township Route 687 (Hill Street) on the north and Legislative Route 39038 (Main Street) on the west. The Record of Decision (the "ROD" or "1985 ROD"), issued by EPA on March 22, 1985, and the Record of Decision Amendment, issued on September 30, 1991, for the Heleva Landfill Site, and appended to this Order as Exhibits 1 and 2 respectively, describe the Site.

2. The area surrounding the Site is primarily rural and has small, single-family residential developments. Approximately 35 families reside in Ormrod, located about one-quarter mile southeast of the Site. Ironton, located approximately one quarter mile west of the Site, has a population of about 150 residents. Beginning in 1989, new homes were constructed along the north side of Hill Street, adjacent to the Site. The Ironton Elementary School is located within 1,500 feet to the South of the Site.

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3. The Site was owned and operated by Stephen D. Heleva and Lois M. Heleva as a sanitary landfill. It began operating in 1967 and accepted 250 to 350 tons per day of general mixed refuse such as mixed refuse, paper, wood, and orchard wastes from the Allentown area. Industrial wastes were disposed of at the landfill as early as 1967 and included, but were not limited to, chlorinated solvents, esters, ethers, benzene and phenols. State inspection reports from the early 1970s indicate that trichloroethene ("TCE"), an industrial cleaner, was disposed of in several areas of the landfill.

4. In 1977, the owner and operator of the landfill, Stephen Heleva, applied for and was denied a solid waste permit from the Pennsylvania Department of Environmental Resources ("PADER"). In an effort to keep the landfill open, the case was appealed before the Pennsylvania Environmental Hearing Board. In 1980, a consent agreement was entered into between Mr. Heleva and the PADER whereby Mr. Heleva agreed, among other things, to control soil erosion, control leachate, limit dumping and cease to dump in previously closed areas. Despite the above, PADER ordered the landfill closed in 1981 due to operational deficiencies.

5. In 1984, the EPA conducted a Remedial Investigation/Feasibility Study ("RI/FS") to evaluate the nature and extent of site contamination. Subsurface soils and groundwater at the Site are presently contaminated with hazardous substances as described in Section III.C.8. below. The

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endangerment to human health and the environment is described in Section III.D. below. Remedial Actions selected in accordance with these studies were documented in a 1985 Record of Decision ("1985 ROD"). The 1985 ROD selected a number of remedial activities which include but are not limited to the following: construction of a cap, surface water diversion, and construction of a gas venting system covering the 20 acre landfill portion of the site.

6. In addition to the remediation required on the Heleva site, the 1985 ROD also required that three residences located in the vicinity of the landfill be provided an alternate source of water. This work was performed by American Telephone and Telegraph Technologies, Inc. ("AT&T Technologies"), a corporate predecessor of AT&T, in accordance with an Administrative Order by Consent issued August 5, 1988. As agreed in an earlier order, dated October 1, 1986, AT&T Technologies reimbursed EPA for costs of construction of a new water main between Ironton and Ormrod, PA.

7. Predesign studies conducted in 1986 and 1987 showed that an alteration of the remedy proposed in the 1985 ROD was necessary. This involved pumping and treating of downgradient groundwater which, according to the 1985 ROD, would not be effective. In addition, the further study demonstrated that dense non-aqueous phase liquids ("DNAPLs"), consisting of trichloroethylene (TCE), are present near gradient at the landfill at the Site. DNAPLs are believed to be a major source

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of continuing groundwater contamination at the Site. As a result of these findings, the ROD was amended in 1991 ("ROD Amendment").

8. The ROD Amendment provides for pumping and treating of both the neargradient ground water to contain the dissolved plume associated with contaminants in the form of DNAPLS, and the downgradient ground water to restore that portion of the aquifer to useability.

9. The landfill portion of the Site continues to be owned by Stephen and Lois Heleva. In 1987, a portion of the Site not including the landfill was transferred by Stephen and Lois Heleva to a trust (the Stephen D. and Lois M. Heleva Trust or the "Trust") for the benefit of their grandchildren. Arthur Heleva and Mary Ann Klugh are trustees of the Trust.

B. Respondents' Responsibility for Conditions at the Site

1. Owner/Operators

a. Stephen D. and Lois M. Heleva are the current owners of the Site and have owned since 1945 the portion of the Site containing the landfill. Stephen D. Heleva and Lois M. Heleva also owned the entire Site at the time of disposal of hazardous substances at the Site, from 1967 to 1981. In addition, Stephen D. Heleva operated the Site from 1967 through 1987.

b. Arthur J. Heleva and Mary Ann Klugh, as Co-trustees of the Trust, have been owners of a portion of the Heleva Landfill Site from 1987 through the present. Arthur J. Heleva and Mary Ann Klugh, as Co-trustees of the Trust, took

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ownership of the property following public disclosure of the hazardous substances found at the Site.

c. Heleva Land Fill leased a portion of the Site and operated the landfill from August 25, 1969, its date of incorporation, until May 1, 1981 when the Site was officially closed by PADER. Hazardous substances were disposed of at the Site during the time Heleva Land Fill operated the Site.

2. Arrangers/Generators

a. At various times during the period 1967 through 1981, AT&T and Olin arranged with transporters for the disposal of hazardous substances each owned or possessed. These hazardous substances were disposed of at the Site.

C. Response Actions and Investigations Performed at the Site

1. The Site was listed as potentially hazardous on November 15, 1979 by PADER and EPA under the RCRA Section 7003 Dumpsite Program. A Site Inspection Report under this program ranked the Site's apparent seriousness as high. A Hazard Ranking System (HRS) model was first generated on August 4, 1982, and was updated on September 2, 1982. The aggregate HRS score of 50.22 resulted in the listing of the Heleva Landfill Site on the CERCLA National Priorities List (NPL).

2. Between August 1979 and April 1983, EPA and PADER sampled and analyzed the groundwater around and beneath the Heleva Landfill Site. These actions were prompted by concerns voiced by local citizens and officials. TCE was consistently identified at concentrations as high as 240 ppm, which is well

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above the acceptable risk range. A number of other volatile organic priority pollutants were found in the most highly contaminated groundwater samples.

3. Beginning in February 1984, extensive sampling of ambient air, groundwater, surface water, surface soils, and subsurface soils was performed as part of the EPA's Remedial Investigation/Feasibility Study (RI/FS) conducted to evaluate the nature and extent of Site contamination.

4. Remedial Actions selected in accordance with these studies were documented in a 1985 Record of Decision ("1985 ROD"). The 1985 ROD recommended a number of remedial activities which included, but are not limited to, the following: construction of a cap, surface water diversion, and construction of a gas venting system covering the 25 acre landfill portion of the Site.

5. In addition to the remediation required on the Heleva site, the 1985 ROD also required that three residences located in the vicinity of the landfill be provided an alternate source of water. This work was performed by AT&T Technologies in accordance with an Administrative Order by Consent issued by EPA on or about August 5, 1988.

6. As agreed in an earlier order, dated October 1, 1986, AT&T Technologies reimbursed EPA for costs of construction of a new water main between Iron-ton and Ormrod, PA.

7. Predesign studies, conducted in 1986 and 1987, showed that an alteration of the remedy proposed in the 1985 ROD

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was necessary. Although the 1985 ROD concluded that treatment of downgradient ground water would not be effective, those predesign studies demonstrated treatment was appropriate. Thus, the ROD Amendment prescribes pumping and treatment of downgradient ground water. In addition, the further study demonstrated that dense non-aqueous phase liquids ("DNAPLs"), consisting of TCE, are present near gradient at the landfill at the Site (A detailed description of DNAPLS is presented in Section III D below). DNAPLS are believed to be a major source of continuing groundwater contamination at the site.

8. Hazardous substances detected during the RI include:

a. Ground Water

Among the hazardous substances found in the ground water are volatile organic compounds ("VOCs") including trichloroethene (TCE), tetrachloroethene, vinyl chloride, 1,1,1 trichloroethane, toluene, acetone, and 1,2 trans-dichloroethene.

b. Residential Monitoring Wells

VOCs detected in the residential wells bordering the landfill property are trichloroethene, tetrachloroethene, and 1,2 trans-dichloroethene.

c. Surface Water and Sediment

Analysis of on-site surface water samples showed the presence of trichloroethene, vinyl chloride, 1,1,1 trichloroethane, toluene, and 1,2 trans-dichloroethene.

d. Other Hazardous Substances found at the Site:

These substances also were found at the Site:

Di-n-butyl phthalate	arsenic	barium
chromium	cobalt	copper
lead	manganese	nickel
zinc	methylene chloride	cadmium
ethyl benzene	2-butanone (MEK)	chloroform
vinyl acetate	xylene	
1,1-dichloroethane	chloroethane	
4-methyl-2-pentanone	1,1-dichloroethene	

D. The Release of Hazardous Substances at the Site and the Resultant Endangerment

1. The following substances, reported in the RI/FS, were found on and in the vicinity of the Heleva Landfill Site and are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. § 302.4. Carcinogens are classified by the EPA according to the following weight-of-evidence categories: a Class A Human Carcinogen means there is sufficient evidence from epidemiological studies to support a causal association between exposure and cancer; a Class B1 Probable Human Carcinogen means there is limited evidence of carcinogenicity of humans from epidemiological studies; and a Class B2 Possible Human Carcinogen means there is limited evidence of carcinogenicity in animals.

a. **Acetone.** Inhalation of acetone may produce headache, fatigue, excitement, bronchial irritation, and in large

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amounts, narcosis.

b. **1,2-Dichloroethane.** 1,2-dichloroethane is a Class B2 carcinogen. Vapors produce irritation of the respiratory tract and conjunctiva, corneal clouding, equilibrium disturbances, narcosis and abdominal cramps.

c. **Tetrachloroethene (perchloroethylene or PCE).** Tetrachloroethene is a Class B2 carcinogen. Non-cancer effects caused by PCE in animals include neurological depression, increased liver weight/body weight ratios, decreased body weight, increased liver triglycerides, decreased DNA content of cells, and altered liver enzyme activity.

d. **Trichloroethene (TCE).** TCE is a Class B2 carcinogen. TCE also affects bone marrow, the central nervous system, the liver and the kidneys in animals and humans. Non-cancer effects include narcosis, enlargement of the liver and the kidneys with accompanying enzyme changes, depressed hemoglobin synthesis, and immunosuppression. Under certain conditions, TCE degrades to 1,2-dichloroethene and vinyl chloride.

e. **Vinyl Chloride.** Vinyl chloride is a Class A carcinogen.

f. **1,1,1-Trichloroethane.** Trichloroethane (1,1,1) has been shown to produce liver damage in laboratory animals. Inhalation exposure to high concentrations of 1,1,1-trichloroethane depressed the central nervous system; affected cardiovascular function; and damaged the lungs, liver, and kidneys in animals and humans. Trichloroethane (1,1,1) has also

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been associated with skin and mucous membranes irritation in humans.

2. A potential public health threat exists at the Site due to the risk to human health resulting from possible exposure to hazardous substances at concentrations that may result in adverse health effects. Human exposure to contaminants from the Site can result from ingestion, inhalation, and direct dermal contact with contaminated ground water. The aquifer beneath the Site has been a past, and is a potential, source of drinking water. Ground water contamination has migrated and has contaminated residential wells to the east/southeast. This contamination will continue to migrate and possibly contaminate other residential wells.

3. Local contaminant migration from the landfill area is primarily downward until the water table is intercepted. Then the controlling factors for flow within the water table dictate the horizontal and vertical distribution of hazardous substances migrating from the Site area.

4. Hazardous substances emanating from the Site are transported in the ground water in the east/southeast direction. After the hazardous substances exit along the southern portion of the landfill, a major fracture system within this area diverts flow towards the east/southeast.

B. The Record of Decision

1. The decision by EPA on the remedial action to be implemented at the Site is partially embodied in the Record of

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Decision ("ROD"), executed on March 22, 1985, on which the Commonwealth had a reasonable opportunity to review and comment and on which the Commonwealth has given its concurrence. The ROD includes a summary of responses to the public comments. The ROD was attached to the original Order as "Exhibit 1" and is incorporated herein by reference.

2. During the course of conduct of the remedial design of the remedial action to be implemented at the Site, EPA determined that a significant change from the remedial action set forth in the ROD was necessary. This change was embodied in the ROD Amendment, executed on September 30, 1991, on which the Commonwealth had a reasonable opportunity to review and comment and on which the Commonwealth has not given its concurrence. The ROD Amendment includes a summary of responses to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b). The ROD Amendment was attached to the original Order as "Exhibit 2" and is incorporated herein by reference. The ROD Amendment is supported by an Administrative Record prepared in accordance with § 113(k) of CERCLA, 42 U.S.C. § 9613(k), that contains the documents and information which support the remedial response selection decision.

3. The remedy selected by the ROD Amendment revised the ground water portion of the original ROD to require the following: "(a) pumping of neargradient ground water to contain the dissolved plume associated with DNAPLs to that limited area;

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(b) pumping of downgradient ground water to clean that portion of the aquifer to "background" levels; and c) treatment of all extracted ground water to levels which will allow for discharge into nearby Coplay Creek in compliance with the requirements of State and Federal discharge regulations."

4. This remedial action will protect human health and the environment by preventing ingestion of ground water contaminants above MCLs and risk based levels and by preventing inhalation of volatile vapors above risk based levels and dermal contact during showering or bathing. It will also monitor the ground water to confirm attenuation of these contaminants to levels which do not pose an unacceptable risk to human health.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

A. The Heleva Landfill Site, is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

B. "Hazardous substances", as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been deposited, stored, placed, or otherwise came to be located on and remain at the Site.

C. The hazardous substances at the Site are being released or threatened to be released as "release" is defined in Section 101(22), 42 U.S.C. § 9601(22), from the Site into the environment, and may present an imminent and substantial endangerment to the public health or welfare or the environment.

D. Each Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

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E. Respondent Stephen D. Heleva is a person who owns and who owned and operated a portion of the Site at the time of disposal, as the terms "owner" and "operator" are defined at Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and is therefore liable pursuant to Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2).

F. Respondent Lois M. Heleva is a person who owns and who owned a portion of the Site at the time of disposal, as the term "owner" is defined at Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and is therefore liable pursuant to Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

G. Respondents Arthur J. Heleva And Mary Ann Klugh as Trustees of the Stephen D. and Lois M. Heleva Trust are persons who own a portion of the Site, as the term "owner" is defined at Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and are therefore liable pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

H. Respondent Heleva Land Fill, Inc., is a person who operated a portion of the Site at the time of disposal, as the term "operator" is defined at Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and is therefore liable pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(2).

I. Respondent American Telephone and Telegraph Company is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at

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the Site, which is a facility, and is liable pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

J. Respondent Olin Corporation is a person who by contract, agreement or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances at the Site, which is a facility, and is liable pursuant to Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

K. EPA has determined that in order to protect against an imminent and substantial endangerment to the public health and welfare and the environment because of an actual or threatened release of a hazardous substance from the facility, the response action selected by EPA must be taken and the Performance Standards must be met to remediate the groundwater contamination to reduce or prevent current and future exposure of such contamination, and to reduce or prevent contaminant migration on and from the Site.

V. SCOPE OF THE RESPONSE ORDERED

Based on the foregoing, Respondents are hereby Ordered, jointly and severally, to comply with the following provisions of this Order, including but not limited to, all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order. Respondents are further ordered to conduct all Work consistent with CERCLA, the NCP and all applicable Federal, State and local law.

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VI. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Order or in the documents attached to this Order or incorporated by reference into this Order, the following definitions shall apply:

A. "Data Quality Objectives" ("DQOs") are qualitative and quantitative statements which specify the quality of the data required to support EPA decisions during remedial response actions. DQOs are determined based on the end uses of the data to be collected.

B. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next working day.

C. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, codified at 40 C.F.R. Part 300, including any amendments thereto.

D. "Operation and Maintenance" or "O&M" shall mean all activities that (1) are required under the Operation and Maintenance Plan developed by Respondents pursuant to this Order and (2) approved by EPA. Operation and Maintenance encompasses

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all those measures required to maintain the effectiveness of the Remedial Action. These measures include, but are not limited to, providing skilled personnel to operate the treatment plants; operation of the treatment plants; provision of utilities, chemicals, and ancillary equipment necessary for such operation; repair or replacement of damaged, defective or worn out parts and equipment including treatment system tanks and pumps, well pumps and all associated piping; maintenance of pumping and monitoring wells to assure their usability; replacement of any pumping or monitoring well that becomes unusable; periodic testing to assure compliance with discharge limits of treated water being discharged into Coplay Creek; and monitoring of the ground water as described in Section VII below. O & M shall not include maintenance activities for the landfill cap, surface water diversion, and gas venting system as described in the 1985 ROD (page 18) performed pursuant to EPA Administrative Order Docket No. III-93-34-DC.

E. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, identified in the ROD relevant to the surface water pump station, and in the ROD Amendment and in Attachment B to the Administrative Order on Consent (AOC) in this matter that the Remedial Action and Work required by this Order must attain and maintain. "Performance Standards" shall include the applicable or relevant and appropriate requirements stated in the ROD and ROD Amendment.

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F. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site, signed on March 22, 1985 by the Regional Administrator, EPA Region III, and all attachments thereto, which was attached to the original Order as Exhibit 1.

G. "Record of Decision Amendment" or "ROD Amendment" shall mean the EPA Record of Decision Amendment relating to the Site, signed on September 30, 1991 by the Regional Administrator, EPA Region III, and all attachments thereto. The ROD Amendment was attached to the original Order as Exhibit 2.

H. "Remedial Design" or "RD" shall mean the final plans and specifications approved by EPA under Section VI (Work to be Performed) of the Heleva Landfill Site Administrative Order on Consent for Remedial Design (AOC), or if EPA disapproves the design submitted by Respondents under the AOC, the final plans and specifications for the Remedial Action which were attached to the original Order as Exhibit 3.

I. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondents to implement the Remedial Design, pursuant to Section VII.E. below, including any additional activities required under Sections VII, X, XII, XIV, XV and XXIII of this Order.

J. "Site" or the "Heleva Landfill Superfund Site", shall mean the facility including wherever hazardous substances are located, as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), consisting of at least 93 acres, including the 25-acre landfill and the Trust Property, located in North Whitehall

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Township, Lehigh County, Pennsylvania, as further described in the ROD and ROD Amendment. (See referenced Exhibits 1 and 2).

K. "State" or "Commonwealth" shall mean the Commonwealth of Pennsylvania.

L. "Trust Property" shall mean the property adjacent to the landfill owned in trust by Arthur J. Heleva and Mary Ann Klugh as Trustees of the Stephen D. and Lois M. Heleva Trust.

M. "Work" shall mean all activities Respondents are required to perform under this Order to implement: the requirements of the ROD relevant to the surface water pump station, the ROD Amendment, the Remedial Design for the Site (including Providing for the Removal of Surface Water Runoff from Landfill Cap as described in Section VII.E.1. below), Remedial Action and Operation and Maintenance, tasks to be performed in accordance with any Work Plan required by this Order, and any other activities required to be undertaken pursuant to this Order.

VII. WORK TO BE PERFORMED

A. General Statement of Requirements/Permits

1. Based on the foregoing, and the Administrative Record supporting this Order, it is hereby ordered that Respondents implement the portion of the ROD relevant to the connection of the discharge from the surface water pumping station and ground water treatment, as amended by the ROD Amendment, including assuring the integrity of the landfill cap provided for in the 1985 ROD by taking the measures identified in

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(E)(1) below. Respondents shall accomplish this by:

a) implementing the Remedial Design as approved by EPA under the Administrative Order on Consent (AOC) in this matter;

or

b) implementing the Remedial Design attached to the original Order as Exhibit 3, revised pursuant to Section VII.E.1, if:

(i) the Remedial Design submitted by Respondents under the AOC is not approved by EPA;

or

(ii) the requirement to perform Work under the AOC is terminated, pursuant to Section 3.3 of the AOC, through Respondents' failure to provide notice pursuant to Section XXII of this Amended Order of their intent to comply with this Order;

and

c) operating and maintaining the systems installed pursuant to the Remedial Design to achieve the Performance Standards, as defined in VI.E., above.

Respondents are required to implement the Remedial Design in accordance with the plans and specifications therein, the ROD Amendment (Exhibit 2 to the original Order), the portion of the ROD relevant to the surface water pump station (Exhibit 1 to the original Order), CERCLA, the NCP, and the requirements and schedules specified in this Order and conduct Operation and Maintenance. Nothing in this Order, the Remedial Design, or

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Remedial Action Work Plan constitutes a warranty or representation of any kind by EPA that compliance with this Order will achieve the Performance Standards or that such compliance will foreclose EPA from seeking compliance with any or all terms and conditions of this Order including, but not limited to, the Performance Standards.

2. All actions and activities carried out by Respondents pursuant to this Order shall be performed in accordance with all applicable and relevant and appropriate Federal and State laws and regulations and EPA regulations, requirements, and guidance documents (and any applicable amendments to such laws, regulations, requirements, and guidance documents which take effect during the pendency of this Order).

3. In the event EPA determines that Respondents have failed to implement any provision(s) of the Work in an adequate or timely manner, or have otherwise violated this Order, EPA may exercise any and all rights it may have including, but not limited to, those rights expressly reserved in Section XVIII (Reservation of Rights) of this Order.

4. Respondents shall obtain all permits and authorizations necessary for off-site Work and shall timely submit complete applications and requests for any such permits or authorizations. This Order is not, and shall not be construed to be, a permit issued pursuant to any Federal, State, or local statute or regulation.

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B. Notice of Order in Property Records

1. Within fifteen (15) days after the effective date of this Order, the Respondents shall record a certified copy of this Order with the Registry of Deeds, or other office where land ownership and transfer records are maintained, in such manner as shall be effective to bring this Order to the attention of any person examining or researching the state and/or quality of the title to the real property constituting the Site or searching for any encumbrances, covenants, easements, liens, restrictions, or other limitations relating to said property.

2. Respondents shall, at least thirty (30) days prior to the conveyance of any interest in the property, give written notice of this Order to the grantee and written notice to EPA and the Commonwealth of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Order was given to the grantee. In the event of any such conveyance, the Respondents' obligations under this Order shall continue. In addition, if EPA approves, the grantee may perform some or all of the Work under this Order. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Respondents to comply with this Order.

C. Assurance of Ability to Complete Work

1. Respondents shall demonstrate their joint ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work required by this

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Order by obtaining, and presenting to EPA for approval within thirty (30) days of EPA's acceptance of the Respondents' contractor(s), the following:

a. One of the following sufficient to demonstrate ability to complete the Work:

- (i) a performance bond;
- (ii) a letter of credit;
- (iii) a guarantee by a third party; or
- (iv) yearly internal financial information;

sufficient to demonstrate to EPA's satisfaction that Respondents have enough assets to complete the Work required by this Order; and

2. Within thirty (30) days of receipt of EPA's notification of acceptance of Respondents' selection of Remedial Action contractors, Respondents shall obtain and provide copies of insurance policies issued to Respondents or their contractors or, in the alternative, one of the above-described financial assurances sufficient to cover the following:

a. Workmen's Compensation and Employer's Liability Insurance in accordance with the laws of the Commonwealth of Pennsylvania;

b. Comprehensive General Liability Insurance, including:

- (i) Contractual Liability - \$1 million each contract;
- (ii) Bodily Injury Liability - \$1 million

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each person; \$1 million each accident;

(iii) Property Damage - \$1 million each
accident;

c. Bodily Injury Liability - \$500,000 each
person; \$1 million each accident;

d. Umbrella Policy in the amount of \$3 million
which shall provide coverage in excess of the underlying coverage
described above; and

e. Environmental Impairment or Pollution
Liability insurance in the amount of one million dollars.

3. For each year that Respondents seek to satisfy the
requirements of this subsection C. by submitting internal
financial information, Respondents shall submit sworn statements
containing such information on the anniversary of the effective
date of this Order until EPA determines in accordance with
Section XXIII of this Order that all Work required pursuant to
this Order has been fully performed in the time and manner
required by this Order and all applicable Performance Standards
have been met. The failure of Respondents to demonstrate their
ability to complete the Work required by this Order, in any given
year, shall not alter Respondents' obligation to comply with all
other terms of this Order.

D. Selection of Contractor(s)

1. All aspects of the Work to be performed by
Respondents pursuant to this Order shall be under the direction
and supervision of qualified personnel, the selection of which

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shall be subject to acceptance or disapproval by EPA.

2. Remedial Action Contractor(s)

a. Within thirty (30) days after EPA approves either the Remedial Action Work Plan submitted by the Respondents pursuant to Section VII.E. of this Order, or the Remedial Action Work Plan submitted by Respondents under Section 6.2(f) the AOC, the Respondents shall notify EPA in writing of the name, title and qualifications of any contractor(s), including subcontractor(s), proposed to be used in carrying out Work required by such approved Remedial Action Work Plan. If at any time thereafter the Respondents propose to change any such contractor(s), the Respondents shall give written notification to EPA and shall obtain acceptance from EPA before the new contractor(s) performs, directs or supervises any Work under this Order.

b. EPA will notify the Respondents in writing of its acceptance or disapproval of the selection of the proposed contractor(s), including subcontractor(s). If EPA disapproves of the selection of the Respondents' proposed contractor(s), the Respondents shall submit to EPA the names and qualifications of at least ~~three~~ (3) contractors that would be acceptable to the Respondents within fourteen (14) days of receipt of EPA disapproval of the selection of the contractor(s) previously proposed. Except as provided below, EPA will provide written notice of the name of the contractor(s) whose selection EPA accepts. The Respondents may select any accepted contractor(s)

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from that list and shall notify EPA of the name of the contractor(s) selected within fourteen (14) days of EPA's designation of accepted contractor selection. Within fourteen (14) days of receipt of EPA acceptance of the Respondents' selection, the Respondents shall enter into an agreement with such contractor(s) selected by the Respondents to perform the Work for which such contractor(s) was approved by EPA. In the event that EPA does not accept any of the contractors proposed in the Respondents' list, the Respondents shall be in violation of this Order. EPA may in such event direct the Respondents to submit to EPA the names and qualifications of at least three (3) additional contractor(s) that would be acceptable to the Respondents within fourteen (14) days of receipt of EPA's disapproval of the contractors proposed by the Respondent.

3. EPA retains the right to disapprove at any time the contractor(s), including subcontractor(s); supervisory personnel; or other persons retained to conduct any of the Work required by this Order. In such event, the Respondents shall propose replacements in accordance with the requirements of this Section.

4. Neither the United States nor EPA shall be held out to be a party to any contract between or among Respondents and any contractors, including subcontractors, or other persons retained to conduct Work required by this Order.

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E. Respondents Shall Perform the Work as Follows:

**1. Provide for Removal of Surface Water Runoff From
Landfill Cap**

As part of the ongoing Operation and Maintenance of the existing landfill cap, it is necessary to construct a pump station to remove surface water runoff that is pooling on the cap surface. The design for this pump station has been completed and the construction will be implemented by the U.S. Army Corp of Engineers. During construction of the ground water treatment facility, Respondents shall connect the pump station to the discharge from the ground water treatment facility to convey the surface water runoff to Coplay Creek. In the event that EPA does not approve the Remedial Design submitted by Respondents pursuant to the AOC, Respondents shall revise EPA's Remedial Design for the ground water treatment facility as appropriate to accomplish this connection. Methodologies, plans and schedules for implementing this activity shall be submitted as part of the RA Work Plan specified in Paragraph VII.E.2.a.

2. Remedial Action Work Plan

a. In the event that EPA disapproves the Remedial Design submitted by Respondents under the AOC, not later than sixty (60) days after such disapproval, Respondents shall submit a Remedial Action Work Plan (RA Work Plan) to implement the Remedial Design in Exhibit 3 of the original Order to EPA for review and approval. If EPA approves the Remedial Design submitted by Respondents under the AOC, Respondents shall submit

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an RA Work Plan to implement the approved Remedial Design not later than 60 days after such approval. The RA Work Plan shall be developed in accordance with those requirements in the ROD relevant to the surface water pump station, the ROD Amendment, the Remedial Design, as revised, any further amendments to the ROD, and any ESDs issued by EPA pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617. The RA Work Plan shall include methodologies, plans and schedules for completion of at least: (1) selection of the Remedial Action contractor; (2) revision of the Remedial Design as necessary (as specified in paragraph VII.E.1. below); (3) implementation of the Remedial Design, as revised; (4) development and submission of the ground water monitoring plan; (5) identification of, and satisfactory compliance with, applicable permitting requirements; (6) implementation of Operation and Maintenance; (7) implementation of the Contingency Plan; and (8) development and submission of the Performance Standards assessment plan. The RA Work Plan shall also include a schedule for implementing all Remedial Action tasks identified in the Final Design and shall identify the initial formulation of Respondents' Remedial Action Project Team.

b. Upon approval by EPA, the RA Work Plan shall be incorporated into this Order as a requirement of this Order.

c. At the same time as the RA Work Plan is submitted, if Respondents have not already done so under Section 6.2(a) of the AOC, Respondents shall submit the Health and Safety

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Plan for field construction activities. The Health and Safety Plan shall conform to applicable Occupational Safety and Health Administration and EPA requirements, including, but not limited to, the regulations at 29 C.F.R. § 1910.120 and 54 Fed. Reg. 9294 (March 6, 1989).

3. Remedial Action

a. Upon written approval by EPA of the RA Work Plan submitted by the Respondents to the AOC, or the RA Work Plan to implement EPA's design, Respondents shall implement the approved RA Work Plan according to the schedules in the RA Work Plan. Unless otherwise directed by EPA in writing, Respondents shall not commence remedial action at the Site prior to approval of the RA Work Plan.

b. If Respondents seek to retain a Remedial Action Contractor to assist in the performance of the Remedial Action, then Respondents shall submit a copy of the solicitation documents, including, but not limited to, the Request For Proposals, to EPA not later than five (5) days after publishing the solicitation documents.

c. Not later than twenty-one (21) days after EPA's acceptance of a contractor selection in accordance with Section VII.D. of this Order, Respondents shall submit a Construction Quality Assurance and Control Plan to EPA for review and approval. The Construction Quality Assurance and Control Plan shall identify key personnel, their experience, their qualifications, and their responsibilities for construction

activities, and shall include a detailed schedule for completing all construction activities. Upon approval by EPA, the Construction Quality Assurance and Control Plan shall be incorporated into this Order.

d. Within 14 days after EPA approves the Construction Quality Assurance and Control Plan, Respondents shall begin on-site implementation of the Remedial Action. Upon approval by EPA of the Construction Quality Assurance and Control Plan, Respondents shall implement and comply with the schedules and terms of all deliverables relating to the Remedial Action including the RA Work Plan and the Construction Quality Assurance and Control Plan.

e. The Work performed by the Respondents pursuant to this Order shall, at a minimum, achieve the Performance Standards and shall be consistent with the EPA approved Work Plans.

f. Notwithstanding any action by EPA, Respondents remain fully responsible for achieving the Performance Standards. Nothing in this Order, nor in EPA's approval of the Remedial Action Work Plan, nor approval of any other submission, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Action will achieve the Performance Standards. Respondents' compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the Performance Standards.

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4. Off-Site Shipments

a. Respondents shall, at least twenty-one (21) days prior to any off-Site shipment of hazardous substances from the Site to a waste management facility, provide written notification to the appropriate state environmental official in the receiving state and to EPA's Remedial Project Manager ("RPM") of such shipment of hazardous substances. However, the requirement of notification to EPA of shipments shall not apply to any off-Site shipments when the total volume of all shipments from the Site to the waste management facility will not exceed ten (10) cubic yards.

b. The notification shall be in writing, and shall include the following information, where available:

- (i) the name and location of the facility to which the hazardous substances are to be shipped;
- (ii) the type and quantity of the hazardous substances to be shipped;
- (iii) the expected schedule for the shipment of the hazardous substances; and
- (iv) the method of transportation.

Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances to another facility within the same state, or to a facility in another state.

c. The identity of the receiving facility and

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state will be determined by Respondents following the award of the contract for the Remedial Action. Respondents shall provide all relevant information, including information under the categories noted in Section VII.E.5.b. above, on the off-Site shipments as soon as practicable after the award of the contract and at least fourteen (14) days before the hazardous substances are planned to be shipped.

d. All materials removed from the Site shall be disposed of or treated at a facility in accordance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), the EPA "Revised Off-Site Policy", and all other applicable or relevant and appropriate Federal, State and local regulations.

5. Operation and Maintenance

Respondents shall perform the activities during O&M identified in the definition of O&M above, the ROD and ROD Amendment, relevant to ground water monitoring, pumping, treatment and discharge, and in accordance with the RA Work Plans and the EPA-approved O&M Plan to be submitted pursuant to this Order. The O&M Plan shall be submitted as part of the submissions required under the Remedial Action Work Plan and shall be subject to EPA approval. Notification requirements for off-site shipment of wastes, described above, shall also be met during O&M.

6. Progress Reports

a. In addition to the other deliverables set forth in this Order, Respondents shall provide monthly progress

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reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the fifth day of each month following the effective date of this Order. Respondents' obligation to submit progress reports continues until EPA gives Respondents written notice that Respondents have demonstrated, to EPA's satisfaction, that all work required pursuant to this Order has been fully performed and all performance standards have been met. At a minimum these progress reports shall:

- (i) Describe the actions that have been taken to comply with this Order during the prior month;
- (ii) Include all results of sampling and tests and all other data received by Respondents and not previously submitted to EPA;
- (iii) Describe all work planned for the next month with schedules relating such work to the overall project schedule for RA completion;
- (iv) Describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays; and

b. Failure to submit written reports in

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accordance with the requirements of Section VII.E.6.a. shall constitute a violation of this Order.

VIII. PLANS AND REPORTS REQUIRING EPA APPROVAL

A. 1. All deliverables, reports or other items required by the Order shall be submitted to EPA for approval.

2. Communications from Respondents to EPA and any documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to this Order, shall be directed to the EPA Project Coordinator by overnight mail or equivalent delivery.

B. Unless otherwise specified by the EPA RPM either verbally or in writing, three copies of all documents, including reports, approvals, and other correspondence submitted to EPA pursuant to this Order, shall be directed to the EPA RPM identified pursuant to Section IX of this Order, in accordance with the requirements of that Section. Three copies of all such documents shall simultaneously be submitted to the Commonwealth of Pennsylvania at the following address:

Ronald Shock
Bureau of Waste Management- HSCD
Department of Environmental Resources
Cross Valley Center
667 North River Street
Wilkes-Barre, Pennsylvania 18705
(215) 826-2549

C. After review of any deliverable, plan, report or other item that is required to be submitted for review and approval pursuant to this Order, EPA may: (1) approve the submission; (2) approve the submission with required modifications; (3)

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disapprove the submission and direct Respondents to re-submit the document after incorporating EPA's comments; or (4) disapprove the submission and perform all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term mean the action described in items (1) or (2) of this paragraph.

D. In the event of approval by EPA, Respondents shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

E. Upon receipt of a notice of disapproval or a requirement for a modification, Respondents shall, within twenty-one (21) days or such other time as specified by EPA in its notice of disapproval or requirement for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

F. If any submission is disapproved by EPA, Respondents shall be deemed to be in violation of this Order and EPA may assume responsibility for performing all or any part of the response action. Such EPA performance shall not release Respondents from complying with all other requirements of this Order.

G. Only EPA may make determinations regarding the sufficiency or acceptability of all documents, and of any

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activities performed pursuant to this Order.

H. Notwithstanding any action by EPA, Respondents remain fully responsible for achievement of the Performance Standards. Nothing in this Order, nor in EPA's approval of any submission thereunder, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or the Remedial Action will achieve the Performance Standards. Respondents' compliance with such approval documents does not foreclose EPA from seeking additional work to achieve the Performance Standards.

IX. DESIGNATED PROJECT COORDINATORS

A. The EPA's Project Coordinator shall be the EPA Remedial Project Manager ("RPM"). Unless otherwise directed by the EPA RPM, all communications, whether written or oral, from Respondents to EPA shall be directed to EPA's RPM. EPA's RPM is:

Richard Watman
U.S. Environmental Protection Agency
Region III
841 Chestnut Building (3HW24)
Philadelphia, PA 19107
(215) 597-8996

B. EPA has the non-reviewable right to change its RPM. If EPA changes its RPM, EPA will inform Respondents in writing of the name, address and telephone number of the new RPM.

C. EPA's RPM shall have the authority lawfully vested in an RPM by the NCP. In addition, EPA's RPM shall have authority, consistent with the NCP, to halt any work required by this Order, and to take any necessary response action when the RPM determines

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that conditions at the Site may present an imminent and substantial endangerment to public health or welfare or the environment.

D. Within ten (10) days after the effective date of this Order, Respondents shall designate a Project Coordinator and shall submit the name and qualifications of the Project Coordinator, including any support entities and staff, to EPA for review and acceptance. Respondents' Project Coordinator shall be responsible for overseeing the Respondents' implementation of this Order. If Respondents wish to change their Project Coordinator, Respondents shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator.

E. Respondents' selection of a Project Coordinator shall be subject to EPA acceptance. If EPA does not accept the selection of the Project Coordinator, Respondents shall submit to EPA a list of proposed Project Coordinators, including primary support entities and staff, that would be acceptable to them, within thirty (30) days after receipt of EPA's notice not to accept the Project Coordinator previously selected. EPA will then provide written notice to Respondents, and the Respondents may then select any accepted Project Coordinator from EPA's list and shall notify EPA of the name of the Project Coordinator selected within twenty-one (21) days of EPA's designation of accepted Project Coordinators.

F. Each Project Coordinator will be responsible for

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overseeing the implementation of this Order.

G. No informal advice or guidance from the EPA RPM shall relieve Respondents of any obligations under this Order.

X. ADDITIONAL RESPONSE ACTIVITIES

A. In the event that EPA determines that additional response activities are necessary to meet the Performance Standards, EPA may notify Respondents that additional response actions are necessary.

B. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondents shall submit for approval by EPA a work plan for the additional response activities. The work plan shall conform to the applicable requirements of this Order. Upon EPA's approval of the work plan for additional response activities, the work plan shall become an enforceable part hereof and Respondents shall implement that work plan in accordance with the provisions and schedule contained therein.

XI. EPA PERIODIC REVIEW

Under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA must review the Remedial Action at least every five (5) years after initiation of the Remedial Action, if hazardous substances remain on the Site, to assure that the work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondents shall conduct

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the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c). As a result of any reviews performed under this Section, Respondents may be required to perform additional work or to modify work previously performed.

XII. ENDANGERMENT AND EMERGENCY RESPONSE

A. In the event of any action, occurrence or situation during the performance of the Work that causes or threatens to cause a release of a hazardous substance or that may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or endangerment, and shall immediately notify EPA's Remedial Project Manager. If this person is not available Respondents shall notify Region III's Eastern Response Section by telephoning (215) 597-9898. Respondents shall take such action in consultation with EPA's RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan and the Contingency Plan.

B. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

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XIII. SITE ACCESS

A. As of the effective date of this Order, each Respondent leasing, owning, or otherwise controlling property at the Site shall provide access to EPA, the Commonwealth of Pennsylvania and the Respondents and their respective employees, agents, consultants, contractors, and other authorized representatives for the purposes of conducting any activity required by or related to this Order. Such access shall permit EPA and its employees, agents, consultants, contractors, and other authorized representatives to conduct all activities described in Sections XIII and XIV.

B. To the extent that Work required by this Order must be performed on property not presently owned or controlled by Respondents, the Respondents shall use best efforts to obtain access agreements from the present owners of such property within sixty (60) days of the effective date of this Order. At a minimum, best efforts shall include, but shall not be limited to, a certified letter from Respondents to the present owners of such property requesting access agreements fulfilling the requirements of Section XIII.A. and C. In the event that the property owners refuse to provide such access or access agreements are not obtained within sixty (60) days of the effective date of this Order, whichever occurs sooner, the Respondents shall immediately notify EPA, in writing, of all efforts to obtain access and the circumstances of their failures to secure access agreements. EPA may, in its discretion, thereafter assist Respondents in

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obtaining access.

C. EPA and its employees, agents, consultants, contractors, and other designated representatives shall have the authority to enter and freely move about all property subject to this Order at all reasonable times for the purposes of, inter alia, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondents in carrying out the terms of this Order; conducting such tests and taking such samples as EPA deems necessary; using a camera, sound recording, or other documentary type equipment; and verifying the data submitted to EPA by the Respondents. In addition, EPA and its employees, agents, consultants, contractors, and other authorized representatives shall have authority to enter, at all reasonable times, all areas in which records related to the performance of the Work required by this Order are retained. The Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to Work undertaken pursuant to this Order. Nothing herein shall be interpreted as limiting the inspection or information gathering authorities of EPA under Federal law.

D. Notwithstanding any provision of this Order, EPA retains all access authorities and rights under CERCLA and any other applicable statute and regulation.

XIV. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. Respondents shall notify EPA in writing not less than

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fourteen (14) days in advance of any sample collection activity to be undertaken pursuant to this Order.

B. 1. Subject to the provisions contained in Section XIV.B.2 of this Order, EPA and its authorized representatives shall have full access to all information maintained or created by, or on behalf of, Respondents in connection with activities conducted pursuant to this Order including, but not limited to, contractual documents, sampling data, and field notes. All such information requested by EPA and maintained by Respondents and/or Respondents' contractors, agents, or assigns (and, where appropriate, information required by Section XIV.B.2 of this Order), shall be made available to EPA and/or its authorized representatives within thirty (30) days of receipt of any such request.

2. Respondents' obligation to disclose information requested by EPA pursuant to Section XIV.B.1 of this Order is subject to applicable privileges recognized by Federal courts under Federal law, provided that no sample results or analytical data shall be claimed as privileged. Where a claim of privilege is invoked as to information, Respondents shall identify such information and state the basis of any privilege claimed. In the event Respondents withhold a document as privileged, Respondents shall provide EPA with the date, title, author, and addressee/recipient of the document; a description of the contents of the document; and the identity and basis of each privilege asserted.

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C. Upon reasonable notice, Respondents and/or their contractors or subcontractors shall make themselves available for such meetings, conferences, and/or inspections with EPA, or its representatives, as may be necessary for EPA to oversee the performance of Work required by this Order.

D. At the request of EPA, Respondents shall provide EPA or its authorized representatives with split or duplicate samples of any material sampled in connection with the implementation of this Order and/or shall permit EPA or its authorized representatives to take such split or duplicate samples of any samples taken.

E. The Respondents may assert a claim of business confidentiality covering part or all of the information or documentation requested by or provided under this Order in the manner described in 40 C.F.R. § 2.203(b). Such an assertion shall be substantiated in accordance with 40 C.F.R. § 2.204(e)(4) at the time the assertion is made. Information subject to such a claim will be handled in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no claim of business confidentiality accompanies the information or documentation when it is submitted or made available to EPA, it may be made available to the public by EPA without further notice to Respondents. Respondents shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, analytical or monitoring data.

F. Respondents shall maintain for the period during which

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this Order is in effect, an index of documents that Respondents claim as confidential business information. The index shall contain, for each document, the date, author, addressee and subject of the document. Upon written request from EPA, Respondents shall submit a copy of the index to EPA.

G. Respondents shall cooperate with EPA to ensure that all data generated as part of Work to be performed under this Order is maintained in a computerized system that is compatible with EPA's Personal Computer Data Management System. The means of storing and manipulating data generated as part of Work to be performed under this Order shall be described, in a Data Management Plan, as a component of the Sampling and Analysis Plan. Upon request from EPA, Respondents' computerized data bases pertaining to the Work shall be provided to EPA.

XV. QUALITY ASSURANCE

A. Respondents shall use the quality assurance and quality control (QA/QC) procedures, including chain of custody procedures, described in the "EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986, EPA Document Number 330/9-78-001-R; EPA's "Guidelines and Specifications for Preparing Quality Assurance Program Documentation," June 1, 1987; "Preparing Perfect Project Plans", October 1989, (EPA/600/9-89/087); EPA's "Data Quality Objectives for Remedial Response Activities," March 1987, (EPA/540/G87/003 and 004); and any amendments to these documents, while conducting all sample collection and analysis activities required herein by this Order.

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B. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Order, Respondents shall at a minimum:

1. Use only laboratories that have a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80, "Interim Guidelines and specifications for Preparing Quality Assurance Project Plans," December 1980.

2. Ensure that the laboratory the Respondents use for analysis performs the analyses according to a method or methods deemed satisfactory to EPA and submits all protocols to be used for analyses to EPA at least twenty-one (21) days before beginning analysis.

3. Ensure that EPA personnel and EPA's authorized representatives are allowed reasonable access to the laboratory(ies), records and personnel utilized by the Respondents for analysis of samples collected pursuant to this Order.

4. Prepare a Sampling and Analysis Plan for the sample collection and analyses to be conducted pursuant to this Order. Respondents shall submit the Sampling and Analysis Plan to the EPA Remedial Project Manager for review and approval prior to initiating any field investigation. The purpose of the plan is to present, in detail, the policy, organization, functional activities, quality assurance and quality control protocols necessary to achieve data quality objectives to be set forth in the RA Work Plan and the sampling protocols and procedures to be

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used, and the types, locations and frequency of samples to be taken as a part of the RA. The guidances referenced in Section XV.A. above, shall be used as guidance in the preparation of the Sampling and Analysis Plan; additional guidance may be provided by EPA as requested.

5. Submit, as part of the Sampling and Analysis Plan, a Quality Assurance Project Plan ("QAPP") for the sample collection, transportation, analysis and reporting to be conducted during the Remedial Action and O&M phases pursuant to this Order. These subsequent QAPPs will be submitted to the EPA Remedial Project Manager for review and approval prior to initiating any field investigations to be described in the respective QAPP and in accordance with the schedule to be included in the RA Work Plan. The purpose of the QAPP is to present, in detail, the data quality objectives, sample collection procedures, and data analysis processes and the procedures to ensure that data quality objectives are met.

6. Ensure, except where otherwise specified in the RA Work Plan and subsequent EPA-approved plans to be prepared as part of this Order, that laboratory(ies) analyzing samples required by this Order shall use the methods described by, and submit deliverables delineated in, the current "Statement of Work of the EPA Contract Lab Program" ("CLP"). All constituents and physical parameters to be analyzed for which CLP methods will not be used will be described in detail in the appropriate QAPP and approved by the EPA Remedial Project Manager prior to conducting

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of the sampling and analysis to be described in the respective QAPP.

7. Ensure that any laboratory(ies) analyzing samples pursuant to this Order demonstrate its capability to perform analyses throughout the RA in compliance with CLP requirements through the periodic analysis of Performance Evaluation ("PE") samples. Analysis of PE samples may be waived by EPA if the laboratory has satisfactorily analyzed PE samples submitted by EPA or PADER within the past six months. Documentation of such PE sample analyses are to be submitted to the EPA Remedial Project Manager for verification in accordance with the schedule to be included in the Work Plan.

8. Conduct, in accordance with the QAPP, audits of the laboratory(ies) that will analyze samples from the Site at a frequency to be specified in the QAPP during the time the laboratory(ies) is conducting analyses. The audits will be conducted to verify analytical capability. Audit reports must be submitted to the EPA Remedial Project Manager within fifteen (15) days of completion of each audit. Respondents must report deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take corrective action within two days of the time the Respondents knew or should have known of the deficiency. Laboratories which are CLP Laboratories need not be audited if the CLP procedures are employed by Respondents.

9. Conduct, in accordance with the QAPP, field audits

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during the RA to verify that sampling is being performed in accordance with the Sampling and Analysis Plan. Respondents shall submit a report of the field audit to the EPA Remedial Project Manager within fifteen (15) days of completion of the audit. Respondents must report deficiencies in implementation of the Sampling and Analysis Plan and propose corrective action within twenty-four (24) hours of the time the Respondents or any contractor or subcontractor discovers any deficiency. Respondents shall take immediate action to correct any deficiency.

10. Provide data validation of analyses performed by the laboratory(ies) in accordance with the "Functional Guidelines for Data Review" for data derived by CLP methods, or if another method is used, the data validation shall be performed in accordance with the QA/QC data validation criteria set forth in that method. For methods lacking QA/QC data validation protocols, Respondents must establish validation criteria such as those in Section 8 of the EPA Series Methods in 40 C.F.R. § 136. The appropriate quality assurance data validation summary reports shall be submitted, along with sample data and summary sheets, to the EPA Remedial Project Manager in accordance with reporting requirements to be described in the RA Work Plan and O&M Plan.

11. Unless otherwise directed by the EPA Remedial Project Manager, Respondents shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA, Respondents shall allow split or duplicate

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samples to be taken by EPA or its authorized representatives, of any samples collected by Respondents with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

12. Notwithstanding any provision of this Order, the United States retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statutes or regulations.

XVI. RECORD PRESERVATION

A. Respondents shall preserve, during the pendency of this Order and for a minimum of six (6) years after its termination, all records and documents in their possession that relate in any way to implementation of this Order, despite any document retention policy to the contrary.

B. Respondents shall use their best efforts to obtain copies of all documents relating in any way to the Site and which are in the possession of their employees, agents, accountants, contractors, or attorneys. After expiration of the six (6) year document retention period, Respondents shall notify EPA at least thirty (30) days prior to the destruction of any documents relating to this Order. Upon request by EPA and subject to Sections XIV.B. and E. of this Order, Respondents shall make available to EPA such records or copies of any such records.

C. Respondents shall ensure that any agreement between Respondents and any agent, contractor, consultant, or other

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person retained to perform or oversee Work pursuant to this Order shall explicitly require said agent, contractor, consultant, or other person to maintain and preserve, during the pendency of this Order and for a minimum of six (6) years after termination of this Order, all data, records, and documents within their respective possession or control which relate in any way to this Order or to hazardous substances management and disposal at the Site.

D. Respondents shall not destroy any records relating to this Order until notified by EPA, in accordance with this Section, that EPA has waived its right to obtain such records from Respondents.

XVII. DELAY IN PERFORMANCE

A. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondents under the terms of this Section shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondents' obligations to perform fully all obligations under the terms and conditions of this Order.

B. Respondents shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to EPA's Remedial Project Manager within forty-eight (48) hours after Respondents first knew or should have known that a delay might occur. Respondents shall adopt all reasonable measures to avoid or minimize any such delay. Within five (5) business days after

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notifying EPA by telephone, Respondents shall provide written notification that fully describes the nature of the delay, the measures taken and those planned to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order are not justification for any delay in performance.

XVIII. ENFORCEMENT AND RESERVATIONS OF RIGHTS

A. EPA reserves all rights, claims, interests, and defenses it has under CERCLA or any other law or in equity.

B. Nothing herein shall be construed to prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, to seek injunctive relief, or to seek the imposition of statutory penalties.

C. This Order concerns implementation of the surface water diversion and ground water treatment portion of the remedy selected in the 1985 ROD as amended by the ROD Amendment. EPA reserves all rights, including the right to issue further orders, institute legal action or pursue ongoing litigation against the Respondents, in connection with the performance of any response actions not addressed by this Order.

D. EPA reserves the right to disapprove of Work performed by Respondents pursuant to this Order, to require that Respondents correct and/or re-perform any and all Work disapproved by EPA, and to require that Respondents perform response actions in addition to those required by this Order.

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E. EPA reserves the right to take enforcement actions, including actions for monetary penalties, for any violation of law, regulation or of this Order. Failure to comply with this Order subjects Respondents to the assessment of civil penalties of up to \$25,000 per day and/or punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure pursuant to Sections 106(b) and 107(c) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c). EPA may also undertake other actions as it may deem necessary or appropriate for any purpose including, but not limited to, actions pursuant to Sections 104 and/or 106 of CERCLA, 42 U.S.C. §§ 9604 and/or 9606.

F. EPA reserves the right to undertake removal and/or remedial actions, including all actions required by this Order, at any time such actions are appropriate under CERCLA and the NCP, and to seek reimbursement from Respondents for any costs incurred.

G. EPA reserves the right to bring an action or pursue or amend any ongoing action against Respondents pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of all response costs incurred by the United States in connection with this Order and not reimbursed by Respondents, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at the Site. This reservation shall include but not be limited to past costs, direct costs, indirect costs, the costs of oversight, the costs of analyzing the cost

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documentation to support oversight cost demand, as well as accrued interest as provided in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XIX. COMMUNITY RELATIONS

As requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by EPA to explain activities at or concerning the Site.

XX. GENERAL PROVISIONS

A. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not bound by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

B. This Order does not constitute any decision on pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

C. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondents, or Respondents' employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order, nor shall EPA or the United States be held out as a party to any contract entered into by Respondents, Respondents'

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employees, agents, contractors, or consultants engaged to carry out the requirements of this Order.

D. Nothing herein shall constitute or be construed as a satisfaction or release from liability of Respondents or any other person.

E. Invalidation of any provision or requirement of this Order shall not affect the validity of any other provision or requirement of this Order.

XXI. EFFECTIVE DATE AND OPPORTUNITY TO CONFER

A. Not later than twenty-five (25) days from the date of issuance of this Order, Respondents may confer with EPA to discuss the scope and applicability of this Order, the findings upon which this Order is based, the appropriateness of any action or activity required to be undertaken hereby, or other issues directly relevant to issuance of this Order. Such a conference is not, and shall not be deemed to be, an adversarial hearing or part of a proceeding to challenge this Order, and no official stenographic record of such proceeding shall be kept. Any request for a conference within the prescribed time frame shall be made to:

Elizabeth B. Lukens
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
841 Chestnut Building (3RC21)
Philadelphia, Pennsylvania 19107
(215) 597-0387

B. This Order is deemed "issued" on the date it is signed by the Regional Administrator of EPA Region III. This Order

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shall become effective on the effective date of the Administrative Order on Consent for Remedial Design (AOC) in this matter.

XXII. NOTICE OF INTENT TO COMPLY

A. Respondents shall provide, not later than five (5) days after the effective date of this Order, written notice to EPA's Remedial Project Manager stating whether they will comply with the terms of this Order. If Respondents do not unequivocally commit to perform the RA as provided by this Order, by either committing to implement the Remedial Design if approved by EPA under the AOC, or the Remedial Design attached to the original Order as Exhibit 3, they shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondents shall describe, using facts that exist on or prior to the effective date of this Order, any "sufficient cause" defenses asserted by Respondents under Sections 106(b) and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c)(3). The absence of a response by EPA to the notice required by this Section shall not be deemed to be acceptance of Respondents' assertions.

B. Failure by any Respondent to provide such notice shall be a violation of this Order and deemed to be a decision by such Respondent not to comply with the terms of this Order. Said failure to comply may result in an agency decision to file a judicial action or to initiate a Superfund response action at the Site.

XXIII. CERTIFICATION OF COMPLETION

A. Within ninety (90) days after Respondents conclude that all construction activities required under this Order have been fully performed they shall so notify EPA in writing. Respondents shall conduct a pre-certification inspection to be attended by the EPA Remedial Project Manager, a Registered Professional Engineer and Respondents' Project Coordinator, to be followed by a written report submitted by the Respondents to EPA, within thirty (30) days of the pre-certification inspection. This report shall certify that the construction has been completed in full satisfaction of the requirements of this Order. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the construction or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondents in writing of the activities that must be undertaken to complete the construction and shall set forth in the notice a schedule for performance of such activities. Respondents shall then perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent notification of completion by Respondents that the construction has been fully performed in accordance with this Order, EPA shall so certify in writing to Respondents. This certification shall constitute the certification of completion of the construction for purposes of this Order. This certification, however, shall not affect

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Respondents' other obligations under this Order including, but not limited to, achievement of the Performance Standards, access, O&M, indemnification and record retention, and shall not limit EPA's right to perform periodic reviews pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

B. Within ninety (90) days after Respondents conclude that all phases of the Work have been fully performed, that all remedial objectives in the ROD and ROD Amendment relevant to the surface water pump station and ground water treatment, as revised by EPA in the Periodic Review discussed in Section XI of this Order, and Performance Standards have been attained, and that O&M activities have been completed, Respondents shall so notify EPA by submitting a written report by a Registered Professional Engineer certifying that the Work has been completed in full satisfaction of the requirements of this Order. EPA will require such additional activities as may be necessary to complete the Work or EPA will issue written certification that the Work has been completed, as appropriate, in accordance with the procedures set forth in Section XXIII.A. for certification of completion of the RA. EPA's notification shall not limit EPA's right to perform periodic reviews or to take or require any action that in the judgment of EPA is appropriate at the Site in accordance with Sections 104 and/or 106 of CERCLA, 42 U.S.C. §§ 9604 and/or 9606.

C. The written report provided to EPA pursuant to Section XXIII.B. of this Order shall be accompanied by a sworn certification from the President, Vice President, Secretary, or

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Treasurer of each Respondent, which certification shall be in the following form:

"Except as provided below, I certify that the information contained in or accompanying this [type of submission] is true, accurate, and complete.

As to [the/those] portion(s) of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under the penalty of law that this [type of submission] and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

D. If EPA determines that all activities have been fully performed in accordance with this Order, EPA will so notify the Respondents. In the event EPA determines that activities have not been fully performed in accordance with the requirements of this Order, ~~EPA~~ will notify Respondents in writing of the activities or tasks which must be completed or undertaken to achieve compliance with this Order, together with a schedule for completing such actions.

XXIV. ADMINISTRATIVE RECORD

The Administrative Record compiled in support of this Order

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may be reviewed at the EPA Region III offices by contacting the EPA Remedial Project Manager.

XXV. THE UNITED STATES NOT LIABLE

The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondents, or their directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXVI. MODIFICATION

A. Except as provided in Section XXVI.B. of this Order, the provisions of this Order may be modified solely by the EPA Region III Regional Administrator. Such modification shall be in writing and may be made at any time.

B. Any document submitted to, and approved or accepted by EPA pursuant to this Order, may be modified in writing by EPA. The effective date of such modifications shall be the date on which Respondents receive notice of such modification.

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Heleva Landfill Site
EPA Docket No. III-93-42-DC

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IT IS SO ORDERED.

Stanley L. Laskowski
STANLEY L. LASKOWSKI,
for Acting Regional Administrator
U.S. Environmental Protection Agency
Region III

3/8/94
DATE

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APPENDIX B

PERFORMANCE STANDARDS

As required by the September 30, 1991 ROD Amendment, the Amended Remedy will achieve containment of the DNAPL source in the neargradient area to prevent further recontamination of the downgradient ground water. DNAPLs will be assumed to be present in any area where the concentration in the ground water of any individual chlorinated hydrocarbon solvent listed in Table 1 of the 1991 ROD is greater than 1% of its aqueous product solubility. Extraction wells will be located and operated in the neargradient area such that the DNAPL source is contained and additional dissolved DNAPL is prevented from moving downgradient. Monitoring wells shall be installed in the neargradient area in sufficient numbers and at the proper locations such that a determination can be made as to whether any part of the dissolved portion of the DNAPL plume is escaping capture. The number and location of these wells will be specified in the design of the extraction system. These wells will be sampled, and their water levels measured, on a quarterly basis for 2 years and then yearly thereafter for at least 30 years. After 30 years, EPA will reevaluate the need for, and may adjust the frequency of, this yearly monitoring. This schedule may be modified after review and approval by EPA. If this sampling or water level measurement, or any subsequent capture analysis, indicates that the dissolved portion of the DNAPL plume is bypassing the extraction wells, additional actions will be undertaken to contain the DNAPL plume including, but not limited to, the drilling of additional extraction wells to supplement the initial extraction well system.

As required by the ROD Amendment the Amended Remedy will achieve background levels for the contaminants throughout the downgradient ground water, which is a relevant and appropriate requirement under the PA Hazardous Waste Management Regulations. The Pennsylvania ARAR for hazardous substances in ground water is that all ground water must be remediated to "background" quality as specified by 25 PA Code §§ 264.90 - 264.100, specifically 25 PA Code §§ 264.97(i) and (j) and § 264.100(a)(9). The Commonwealth of Pennsylvania also maintains that the requirement to remediate to background is also found in other legal authorities.

In order to remediate the downgradient ground water, the extraction system implemented under this Amended Remedy shall operate until ground water monitoring shows that the concentrations of contaminants of concern throughout the area of attainment have been reduced to "background" levels and maintained as defined below. Monitoring wells shall be installed in the downgradient area in sufficient numbers and at the proper locations such that a determination can be made as to whether these levels have been achieved. The number and location of these wells will be specified in the design of the extraction system. These wells will be sampled, and their water levels measured, on a quarterly basis for

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3 years and then yearly thereafter for at least 30 years. This schedule may be modified after review and approval by EPA. In order to demonstrate that background levels have been achieved, however, monitoring must be conducted quarterly. If this quarterly monitoring confirms to EPA's satisfaction that background levels have been attained throughout the downgradient area and remain at the required levels for a statistically significant period of time (but no less than twelve consecutive quarters), operation of the extraction system can be suspended. If, subsequent to the extraction system shutdown, yearly monitoring shows the ground water concentrations of any contaminant of concern to be above background levels, the extraction system shall be restarted and continued until the required levels have once more been attained and maintained for no less than twelve consecutive quarters as demonstrated by quarterly monitoring.

If this sampling or water level measurement, or any subsequent capture analysis, indicates that it may not be possible to achieve and maintain background concentrations throughout the downgradient aquifer with the initial extraction well system, additional actions will be undertaken to achieve background levels including, but not limited to, the drilling of additional extraction wells to supplement the initial extraction well system.

Any individual extraction well may be closed if quarterly monitoring confirms to EPA's satisfaction that background levels have been attained throughout the area of that well and remain at the required levels for a statistically significant period of time (but no less than twelve consecutive quarters) and, based on such sampling and concurrent water level measurement, as well as any subsequent capture analysis, EPA determines that such closure will not adversely affect the ability of the remainder of the downgradient extraction system to meet the performance standards as specified in the Amended ROD, pp. 12-15, and herein. If EPA determines that yearly monitoring has shown any contaminant of concern to be bypassing the remaining operating wells such that the ground water concentrations of such contaminants are above background levels in the vicinity of any previously closed extraction well, such well shall be reopened and operation continued until the above requirements have once more been met.

All extracted ground water will be treated to levels which will allow for discharge into nearby Coplay Creek in compliance with the requirements of State and Federal discharge regulations.

If implementation of the downgradient extraction system, including all additional actions required above, demonstrates, in corroboration with hydrogeological and chemical evidence, that it will not be possible to meet the remediation standards and it is thus technically impracticable to achieve and maintain background concentrations throughout the downgradient aquifer, then EPA, in consultation with the Commonwealth of Pennsylvania, may amend the ROD or issue an Explanation of Significant Differences to inform

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the public of an alternative ground water strategy which may include, but not be limited to, any of the following:

- a) engineering controls such as physical barriers, or long-term gradient control provided by low level pumping, as containment measures;
- b) chemical-specific ARARs will be waived for the cleanup of those portions of the aquifer based on the technical impracticability of achieving further contaminant reduction;
- c) institutional controls will be provided/maintained to restrict access to those portions of the aquifer which remain above remediation standards;
- d) continued monitoring of specified wells; and
- e) periodic reevaluation of remedial technologies for ground water restoration.

The decision to invoke any or all of these, or other, measures may be made by EPA in consultation with the Commonwealth of Pennsylvania, during a periodic review of the remedial action, which occurs at least every five years, in accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c) or at any other time that EPA, in consultation with the Commonwealth of Pennsylvania, deems appropriate.

AR000527

CERTIFICATE OF SERVICE

I hereby certify that the original of the Administrative Order on Consent for Remedial Design, EPA Docket No. III-94-19-DC, signed by the Regional Administrator for the Environmental Protection Agency ("EPA") Region III on June 21, 1994, was filed with the Regional Hearing Clerk, EPA Region III, and that true and correct copies of said Order on Consent were sent by overnight mail to Respondents and their representatives at the following addresses.

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6-22-94
Date

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